IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 13TH APRIL 2007 / 23RD CHAITHRA 1929

Crl.MC.No. 1194 of 2007()

CC.605/2004 of JUDL. MAGISTRATE OF FIRST CLASS, VAIKOM

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PETITIONER:

VISWAKUMAR,
S/O.APPUKUTTAN PILLAI
KOVOOR BHAVANAM,
UMAYANELLOOR MURI,
MAYYANADU VILLAGE,
KOLLAM TALUK.

BY ADV. SMT.S.KARTHIKA
SMT.K.P.GEETHA MANI
SRI.M.R.ANISON
SRI.T.R.RAJESH

RESPONDENTS:

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1. STATE OF KERALA REP. BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM

2. A.MOONI, SALES TAX OFFICER,
SALES TAX OFFICE, VAIKOM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 13/04/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.1194 of 2007

Dated this the 13th day of April 2007

O R D E R

The petitioner faces allegations interalia under Sections 468 and 471 I.P.C. Altogether nine accused persons are facing trial in the prosecution. The case was registered long back and bears the number 605/2004 before the Judicial First Class Magistrate Court, Vaikom. At long last, the case appears to have crept its way up and now stands listed for trial to 18/04/2007. Charges were framed by the learned Magistrate long earlier. No challenge has been raised against the charges framed so far.

2. As the matter stands posted for trial to 18/4/2007, the petitioner has come to this court on 12/4/2007 with the present application under Section 482 Cr.P.C. It is prayed that proceedings against the petitioner may be quashed. It is further contended that an order of stay may be granted against the trial which is to commence on 18/4/2007.

3. What is the reason? The learned counsel for the petitioner submits that the petitioner has already been tried on

an identical allegation along with other three accused and he has been found not guilty and acquitted as per judgment dated 18/2/2005 in C.C.No.559 of 2000 before the learned Judicial First Class Magistrate Court-I, Kottarakkara. In short, the contention is that the petitioner cannot be directed to stand trial again for the very same allegations for he has been found not guilty and acquitted earlier by the other court. Though I am satisfied that the contention deserves closer scrutiny, I am certainly not persuaded to invoke the extraordinary inherent jurisdiction available to this court under Section 482 Cr.P.C in favour of the petitioner. Why did the petitioner not raise this contention earlier? Was this contention raised at the stage of framing charge? Why did the petitioner not assail the order framing charge on the ground that it offends Section 300 Cr.P.C? These questions remain unanswered. I must note that the case has been filed from 2004 and not only the petitioner but other accused are also facing trial. An order of stay at this stage would certainly further delay the final disposal of the case against other co-accused who are bound to face trial undisputedly. I am, in these circumstances, of the opinion that the ideal cause that this court can now follow is to direct the petitioner to raise the

contentions which he wants to raise before me now, before the learned Magistrate in the course of the trial. Of course, if the petitioner had come to this court earlier in proper time, this court might have been inclined to look into the contentions raised here itself. But in the facts and circumstances of this case, I am satisfied that the progress of the trial of the case registered in 2004 which stands posted to 18/4/2007, should not be retarded by this court by entertaining this Criminal Miscellaneous Case at this belated hour at the instance of the petitioner, who evidently has slept over his rights all along.

4. This Criminal Miscellaneous Case is, in these circumstances, dismissed. But I may hasten to observe that the dismissal of this Criminal Miscellaneous Case will not, in any way, fetter the liberty of the petitioner to raise all his contentions including the contention that Section 300 Cr.P.C must save him from the subsequent prosecution before the learned Magistrate.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF APRIL 2007